



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

ELP
Docket No. 3849-00
6 November 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 1 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 4 October 1960 for four years at age 18. The record reflects that you were advanced to PFC (E-2) and served without incident until 13 July 1961 when you were apprehended by civil authorities for automobile theft. On 19 July 1961 you were convicted on your plea of guilty by civil authorities of a less serious offense. You were sentenced to 90 days in the county jail and were released on 3 October 1961.

The record further reflects that on 29 November 1961 you received a nonjudicial punishment for a one day period of unauthorized absence. Thereafter, the commanding officer reported your civil conviction and his recommendation that you be retained was approved by the commanding general.

On 11 March 1962 you were apprehended by civil authorities on two charges of burglary. You had entered an unoccupied dwelling on the night of 27 February 1962 and stole two pistols, a pair of binoculars, and some loose change. On 6 March 1962, you broke into a garage and stole an electric tune-up kit and various tools. On 27 March 1962 you were convicted by civil authorities of burglary and sentenced to prison for not less than five years.

On 14 May 1962 you were notified that you were being recommended for discharge by reason of misconduct due to conviction by civil authorities. You were advised of your procedural rights and waived your rights to be represented by counsel and to present your case to an administrative discharge board. Thereafter, the commanding officer recommended discharge by reason of misconduct due to conviction by civil authorities. The discharge authority approved the recommendation and you received an undesirable discharge on 29 June 1962.

Applicable regulations provided that a Marine convicted by civil authorities for an offense which involved moral turpitude, or for which the maximum permissible punishment under the Uniform Code of Military Justice is confinement in excess of one year, could be administratively discharged, as undesirable, by reason of misconduct.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity, low test scores, and the fact that it has been more than 38 years since you were discharged. The Board noted your contention that you were not advised by counsel of the actions the Marine Corps would be taking, or contacted by any military personnel regarding your rights. The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of an NJP and the serious nature of the offenses of which you were twice convicted by civil authorities. Your contentions are neither supported by the evidence of record nor by any evidence submitted in support of your application. The Board concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director